



**TOWN OF HARPSWELL  
PLANNING BOARD MINUTES  
July 16, 2008  
Draft**

**MEMBERS PRESENT**

Dorothy Carrier, Chair  
Joanne Rogers, Vice Chair  
John Papacosma  
Roberta Floccher, Associate  
Debora Levensailor, Associate

**MEMBERS ABSENT**

Robin Brooks  
Kenneth Cichon

**STAFF PRESENT**

Carolyn Tukey, Town Planner  
Melissa Swanson, Recording Secretary

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The Town of Harpswell Planning Board meeting, being duly advertised in The Times Record, was called to order at 6:35 PM by Dorothy Carrier, Chair. The Pledge of Allegiance was recited. Since two Board members were absent (Mr. Brooks and Mr. Cichon), the Chair appointed Ms. Floccher and Ms. Levensailor full voting members for the meeting. The Chair paraphrased the Agenda, and then explained the hearing process and procedures for Planning Board meetings.

**CONSIDERATION OF MINUTES**

Ms. Rogers, Vice Chair, moved to accept the Minutes of May 21, 2008 as printed, and the motion was seconded.

**SITE VISIT**

The Site Visit was attended by Board members Ms. Carrier, Ms. Rogers, Mr. Papacosma and Mr. Brooks, and the Town Planner, Ms. Tukey. It was held on Monday, July 14, 2008, and all three Applicant sites were visited.

**OLD BUSINESS**

There was no old business to discuss.

**NEW BUSINESS**

**08-06-01      Donn E. Gagnon (Applicant), Reconstruction of Non-Conforming Structure, Tax Map 52 Lot 122,  
51 Laurel Point Circle, Harpswell**

Mr. Gagnon, Applicant, 45 Mountain Road, Harpswell, spoke on behalf of the property owners. He identified himself as the Power of Attorney for the property owners, Michael McCay and Dan Salera (Mr. Salera was present). He stated that in October, 2007 the owners hired him to do paperwork for a Land Use Application to raise their house and install a crawl space. He had obtained a permit through the Town's Code Enforcement Office. The contractor did the excavating during the winter, leaving the house raised all winter and construction at a standstill. They were to finish the job in the Spring and contacted the homeowners, not Mr. Gagnon, who was the Power of Attorney. According to Mr. Gagnon, the contractor decided to construct a full foundation, because there was no problem with ledge at the site, as expected. They went on with the construction, and the homeowners assumed there was no further permitting necessary. After the project was finished, the Code Enforcement Officer informed Mr. Gagnon that the owners would need a new building permit, as well as a Planning Board Application. The homeowners revised Mr. Gagnon's Power of Attorney so he was able to procure the necessary paperwork from the Town. Mr. Gagnon was also hired by the property owners to fix the grade, set the property lines, and clean up the site, as well as install erosion control.

Mr. Gagnon said that the property owners are now aware that they made a mistake, and are sincerely trying to rectify the situation.

The Chair asked if there was any public comment. There being none, she opened the meeting to comments from the Board.

The Chair clarified with Mr. Gagnon that the issue was “after the fact”; the project is near completion. The site visit revealed that it was a full cellar, with sliding doors opening onto the water side, and the area has been re-landscaped. The Chair said that the Shoreland Ordinance would apply – “Reconstruction of a Non-Conforming Structure”.

The Chair said that, on other occasions, the Planning Board has had issues - renovation, reconstruction or application, of cellars being constructed and then used for something else. She also expressed displeasure at the fact that the general contractor in question was a local Harpswell resident who was well aware of the necessary procedures and didn't follow them. She then addressed the Town Planner regarding the fact that the Town has no policy to hold contractors, etc. accountable when there are violations.

The Town Planner suggested taking the matter up with the Board of Selectmen if there are many examples of that situation that are documented. The Vice Chair asked if there was any way to fine the contractor(s), and the Town Planner said the matter would have to be a separate issue from this particular application. The Chair reiterated that it was 50/50 fault – half the contractor's and half the property owners'.

The Chair read from the Town Planner's memorandum, where the applicable sections of the Shoreland Zoning Ordinance were addressed. There were no comments from the Board.

She went on to read the three “Standard Conditions of Approval” from the memorandum. The Vice Chair asked whether the Board had the plans for the structure, as it now existed, and the Board reviewed packet materials.

Mr. Papacosma stated that there was also an existing fire pit which would have to be removed because it was constructed beyond the existing structure in the non-conforming area. The Board agreed that that would be a condition of approval.

The Vice Chair moved to accept the application as submitted, and the motion was seconded, with the condition that the fire pit be removed.

Mr. Papacosma stated that the property was in the flood zone, and asked whether the additional approvals for the construction had been required. Mr. Gagnon said that, on the original Land Use Application, he was told that it was not necessary. The Town Planner stated that she had spoken with the Code Enforcement Officer regarding floodplain designation, and he had said that a neighbor had received certification, that they were out of the floodplain, and he was certain that the property in question would also be out of the floodplain.

The Chair referenced the Code Enforcement Officer's memo dated July 11, 2008. There was discussion among the Board members regarding floodplain determination, and the Town Planner reiterated that the Code Enforcement Officer determined that the Applicants do not need a Flood Hazard Permit. The Town Planner recommended that the Applicants ask the Code Enforcement Officer if any further permits were necessary, including the Flood Hazard Permit.

Ms. Floccher suggested that the Board modify the language of Condition #3 of the Town Planner's memo to read:  
“This approval is conditioned on the Applicant receiving all necessary state and federal approvals, including, but not limited to, addressing the issue of the Flood Hazard Development Permit.”

The Vice Chair preferred the language of the original motion, with the additional information that, either the permit is not necessary, or the permit had been obtained. There was discussion among the Board members regarding the language of the condition.

The Chair clarified with the Board members that everyone understood the language of the amended motion, and the vote was taken. The motion was accepted unanimously by the Board.

**08-07-01      Darcy Lenzgrinden Dye (Applicant), Sketch Plan, Tax Map 48 Lot 18, Harpswell Islands Road, Harpswell**

Ivy Frignoca, attorney for Lambert Coffin, explained to the Board that Ms. Dye had submitted an application to the Board seeking preliminary approval in a land sale in the Ronald Barber Subdivision, and was attempting to resolve a trespass.

Ms. Frignoca referred the Board to the Harpswell Tax Map which was displayed on an easel, and explained that Ms. Dye owned parcels 2 and 2a as identified on the Subdivision Plan. Pamela and Paul Desjardins own Parcel 1a. She stated that it was discovered in 2006 when a survey was done, that in 2002 the Desjardins had built what seemed to be about 70% of their house, a well, a driveway, a drainage ditch, etc. on Ms. Dye's land.

She also mentioned that the Town had sent a Notice of Violation to the Desjardins dated March 1, 2007 informing them that they were in violation of the Town's Basic Land Use Ordinance, which required a 20 ft. setback. She also said that, at the time the house was built, under the subdivision regulations, there was supposed to be a 50 ft. setback. She continued on to say that, in 2005, before Ms. Dye knew about the trespass, she petitioned the Planning Board, and the Board granted permission to merge the two lots into a single 12.4 acre lot, partly for conservation and partly for tax reasons. One of Ms. Dye's objectives would be to have the ability to subdivide the land into two parcels again at some time in the future, if necessary.

Ms. Frignoca referred the Board to another map that had been done by Brian Johnson of Midcoast Survey, which showed how much land Ms. Dye would have to sell in order to rectify the situation. He came up with a lot of 1.19 acres from the original lot (Lot 2), that conformed to the Town's setback regulations, with the exception that there seemed to be a corner of the Desjardins' house that was within the 250' shoreland zoning setback.

She informed the Board that the parties were going to try to resolve the situation at a settlement conference the following day. The parties involved wanted to clarify that, if a sale was proposed, it would be something that the Planning Board would consider as an application in the future, if the parties agreed.

The Chair asked for public comment, and Paul Desjardins addressed the Board. He stated that he and his wife have lived in Harpswell for six years, and they built the house themselves. He said that they discovered the error, and said that Ms. Dye's surveyor had mismarked the boundary. He distributed a two page handout to the Board members from the surveyor dated March 25, 2008, and gave further background on the issue. Mr. Desjardins wanted to know the "willingness" of the Board to work with them to resolve the land issue.

Ms. Frignoca reminded Mr. Desjardins that any settlements discussed in mediation would not be legal to discuss at a public meeting, i.e. the Planning Board. She went on to say that the only resolution that Ms. Dye would be willing to discuss would be the creation of a regular lot, not an irregular lot. She stated that the Town's Code Enforcement Officer said it was not the Town's practice to create irregular shaped lots. She referred to the Tax Map displayed, and showed the Board the building "envelope". She reiterated that the proposal before the Board was that, if the parties could agree, could it be a proposal that the Board would consider, in order to resolve both the Town's issue of the setback violation and the issue of the neighbors.

Mr. Desjardins referred to the Code Enforcement Officer's testimony at a recent deposition, and gave further history of the lot line, stating that they proposed a third of an acre, and Mr. Wells said that only a quarter of an acre was needed. He also stated that, originally, Ms. Dyer wanted the marshland.

Mr. Papacosma confirmed that the property is non-conforming, and it is the Planning Board's responsibility to see that the two properties become conforming.

The Chair asked for public comment; seeing none, she continued on by asking for questions or comments from the Board. There were none.

The Town Planner reminded the Board what was expected of them regarding this issue, explaining that they were only to give direction, and that only comments were necessary, not a motion or approval of any kind. The Chair decided to ask the Board for their comments individually.

Ms. Levensailor stated that if the plan presented would make the property more conforming, and do what the Code Enforcement Officer expected, then it would be a "step in the right direction".

The Vice Chair stated that it appeared that what was before the Board would meet the ordinances of the Town.

Mr. Papacosma agreed that the plan appeared to conform to the Town's regulations.

Ms. Floccher expressed concern regarding Ms. Dye's wishes to keep the property available for subdivision, etc. in the future. She stated that there were too many variables and hypotheticals in order for the Board to make a determination on that issue.

Ms. Frignoca clarified that the more relevant issues at hand were the setback violations and the issue of the neighbors.

The Chair stated that it appeared to be a unanimous consensus of the Board - that it would address the Town's Ordinances and would make it conforming, and she would support any type of lot line change that would accomplish that.

**08-07-02            Tower Specialists, Inc. (Applicant), Site Plan Review, Tax Map 42 Lot 70, Community Drive, Harpswell**

Paul and Justin Strout, Tower Specialists, Inc. ("TSI"), explained their overall purpose and then introduced David I. Chipman, who had been instrumental in getting a tower project for the Town. Mr. Strout gave a brief history of his company, which had been in business since 1965, and spoke of several other towers that his company has owned and constructed.

He explained that he was before the Board for permission to build the tower structure only, and was not affiliated with any other aspect of it, i.e. a building, antennas, etc. He said that there had been some questions regarding their access to the tower (the roadway). They are proposing to use the existing "glass road", which is an existing road that has been constructed of crushed glass. Mr. Strout stated that, for practical purposes, the glass would make a good road base. In the future, the communications companies would upgrade the road with a gravel surface. He reiterated that he was before the Board for the tower structure only, which he referred to as "Phase I".

Mr. Strout referred the Board to the plan, and explained the difference between a tower and an antenna. He stated that the top 20 ft. of the tower would be for use by the emergency communications systems in the Town. Mr. Strout referred to the communications companies' involvement in the project as "Phase II".

Mr. Strout stated that TSI has received FAA approval for a tower as tall as 320 ft. He stated that the road issue was the only thing left in the contract negotiations with the Town. He referred the Board to a letter in their materials from Chairman Alexander, a former Harpswell Selectman, which gave TSI "right, title and interest" to this area of the parcel. He said that the Town's lawyer wanted them to consider a road that went right to the tower base. He stated there is a 50 ft. right-of-way up Community Drive, and there is a 50 ft. easement to the tower base. Mr. Strout referred the Board to the plot plan and explained how the construction equipment would access the site. He mentioned that the buildings going onto the site would be 12 ft. wide, and that the tractor trailer trucks carrying them would have to back in. He informed the Board that the basic agreement between TSI and the Town would mean the sharing of revenues with the Town. He reiterated that the reason TSI was before the Board was to clarify that the right-of-way and the easement area were all that was needed in order to get to Phase I, to construct the tower.

He stated that the communications companies would go before the Planning Board at a later time in order to get permission to construct the radio buildings, etc. He mentioned that there was a four month lead time in order to complete the tower by December, and was asking for approval by the Board at this time so that construction could be completed before the severe winter weather set in.

The Chair asked for public comment, and Mr. Ned Simmons of 22 Strawberry Creek Road, Harpswell, came forward. He introduced himself, and stated that he and his wife, Doreen Nardone, own the two closest lots to the tower site, and the closest residence on Strawberry Creek. He said that, from the information that was submitted, it was difficult to tell how close their property was to the tower site. He passed out a document to the Board which stated their concerns, and suggested the Board refer to it as they went through the items of the site plan review.

After referring to the Applicant's presentation materials which contained photographs with a tower simulation, Mr. Papacosma asked a question regarding the width of the cross bars on the tower. Justin Strout stated that the widest crossbars he had ever installed were 14 ft., but 12 ft. was more the norm. He admitted that getting the scale correct for the photo simulation was a challenge. He went on to explain how they had derived the photo simulations, which were done by launching a balloon 500 ft. into the air. They have requested a three foot wide tower, and the guy wires would be ½ inch to ¾ inch wire, galvanized.

The Chair chose to address the four waivers asked for, and addressed, in the memorandum from the Town Planner.

From Harpswell's Wireless Telecommunications Facilities Ordinance, §7.2.2.3, "USGS 7.5 Topographic Map", Mr. Strout stated that, in order to get permission from the Town to build the tower, he had to prove there was no other location appropriate. The map showed all structures in the Town that were above 150 ft., and there were no telecommunications facilities higher than 150 ft.

§7.2.2.5.2 Landscaping Plan. Mr. Strout stated that they wanted an exemption from this section because of the proposed location of the tower (in the woods, behind the Town's transfer station).

From the Town's Site Plan Review Ordinance, §14.2(8), "Location of drainage courses, wetlands, fences, etc." Mr. Strout stated that the tower is a three foot cross section, from right to left. Where the tower sits is a concrete base that is 30 inches square, and a foot high. The anchors would be a maximum of 6 ft. x 6 ft. He said that there would be little impact on drainage. He went on to say that, in the easement area (50 ft. x 250 ft.), they would make a special effort to only cut a few trees. He said they would have to cut a 50 ft. easement – 25 ft. on the right, and 25 ft. on the left for the protection of the guy wires. They would leave the stumps of the trees that got cut, and would try to not disturb the soil. There would also be a foot path left at the site after construction for inspection of the anchors.

Ms. Levensailor asked how close the third anchor was to the road, and Mr. Strout referred to the map, stating that it was about 20 ft. off the road, and would not interfere with plowing, etc.

§14.2(9) Surface Water Drainage. Mr. Strout said he would have the same explanation to this waiver as to the previous one.

The Chair asked for questions or comments from the audience, there were none. She then asked for remarks from the Board.

The Vice Chair moved that the Board approve the waivers as requested.

Mr. Papacosma seconded, and the Chair asked for any further comment; there was none.

The Board voted unanimously to approve the waivers.

#### **Wireless Telecommunications Facilities Ordinance – Findings of Fact**

The Chair decided to go through this section of the Town Planner's memorandum. The Town Planner explained to the Board that the referenced §7.2.2.10 of the Ordinance, which dealt with surety for the costs of abandonment, was a separate section from the approval standards, and had to be approved by the Planning Board. The Applicant had not provided this documentation to the Board; it had yet to be evaluated by the Town's legal counsel. The Board agreed that it could be a condition of approval.

§8.2.1 Ms. Levensailor asked Mr. Simmons if he had any comments regarding location. He wanted to know if other alternative locations had been explored and, if so, why were they rejected.

Mr. Strout referred the question to Mr. Chipman, who gave the explanation of the tower location as an existing "industrial site", and the topography seemed appropriate.

The Town Planner asked Mr. Chipman if the tower could be moved slightly, in case it fell, so it would not endanger any persons or property.

He stated that other locations at that site had been considered, but were either ledge or fill land, or difficult (i.e. costly), to access.

Mr. Papacosma said that this area had been designated a "tower zone" by the Town and was considered the best location for a tower.

Mr. Strout introduced Bob Gashlin, a representative of AT&T, and a wireless consultant working with KJK Wireless in Falmouth, Maine. He explained that his job was to find wireless sites for wireless carriers. He said that he was very familiar with the area, due to his work in Harpswell with another wireless carrier. He reiterated that the top 20 ft. of the tower would be designated for public safety, and said that the height was very important for the wireless carriers. He explained that connectivity is very important because wireless carriers must connect with other wireless carriers, and gave examples of other towers in the area with regard to connectivity. The implementation of the proposed tower would facilitate connectivity with other wireless carriers, and he mentioned the importance of both tower height and location.

Ms. Levensailor asked Mr. Gashlin whether the location and height of the proposed tower would suite their needs, and he responded on behalf of AT&T, saying that they had looked at this site, and at other 270 ft.-280 ft. tall antennas, and it would work for them. He reiterated that height would be critical in order to get coverage out to the tip of Harpswell.

The Chair asked if everyone was comfortable with the explanation; there were no comments.

#### §8.2.2 Siting on Municipal Property.

§8.2.2.1 Mr. Strout responded that it would be an industrial use in a tower zone.

§8.2.2.2 Mr. Strout stated that he discussed this issue with Mark Wallace of the Transfer Station, and it was agreed that there would be no interference with the purpose of the recycling facility.

§8.2.2.3 Mr. Strout said that he was working with the Town regarding the liability insurance issue.

§8.2.3 Design for Collocation. Mr. Strout stated that there was room on the tower for five cell carriers, but there were three "lined up". He reiterated that height would be an issue if the tower was not tall enough for the bottom placed carrier, but it was not an issue at this time.

§8.2.4 Height. The standards of this section were met.

§8.2.5 Setbacks. Mr. Strout referred the Board to the map which demonstrated the 105% specified in the Ordinance.

The Chair recognized Mr. Simmons for comment regarding §8.2.4. He referred the Board to his handout, and read from the Wireless Telecommunications Facilities Ordinance, the "Definitions" section, §14.1 and §14.2.

The Chair asked the Board for any comments.

Mr. Papacosma explained to the Board how the measurement was usually taken at a proposed building site. He said that the base would determine the height, and that it was in a relatively flat area.

Mr. Simmons reiterated that one of the guy wire anchors was "in a gully".

Mr. Simmons disagreed with the Board, as the Board decided that the Ordinance did not address any appurtenances in the referenced "Definitions" section.

§8.2.2.2 The proposed structure would not interfere with the intended purpose of the property; therefore, the standards of this section were met.

§8.2.2.3 This section dealt with liability insurance and, since the Applicant was in the process of finalizing a lease agreement with Board of Selectmen, the Board found that the standards of this section have not been met. The Board concluded that this issue would be a condition of approval.

§8.2.3 This section dealt with the design for collocation; the Board found that the standards of this section have been met.

§8.2.4 Height. The Board found that the standards of this section were met.

§8.2.5 At this point, the Chair realized there had been some repetition.

§8.2.6 Landscaping. The Board reiterated that this condition had been waived.

§8.2.7 Fencing. The Applicant explained that the lease area would be 100 ft. x 100 ft., and that there would be chain link fencing around the area that would be 75 ft. x 75 ft. It would be 8 ft. high, with barbed wire on top. The Board found that standards of this section were met.

§8.2.8 Lighting. The Chair asked the Applicant to explain the proposed lighting situation. He stated that it would come with the building, and that the communications companies would address the issue. He clarified that lighting would be dealt with in Phase II of the project. There would be no security lighting installed by TSI during their part of the construction phase.

Mr. Gashlin clarified that the communications companies typically construct "pre-fab" buildings which have one service light by the front door that would reflect downward, use a 100-150 watt light bulb, and have an internal shutoff switch. He stated that they would most likely be used in an emergency situation.

Mr. Papacosma wanted to know about security regarding an intrusion situation, and Mr. Gashlin intimated that any break-in would be unlikely.

The Chair asked about the requirement from the FAA, and Mr. Strout read the response to the Board, from Section 6 of his application packet materials.

Ms. Floccher asked about maintenance of the tower lighting, and Mr. Strout said that it was addressed in the lease agreement. He went on to explain that TSI has a "monitoring service" that notifies them if there is a light out, and FAA is notified also.

Ms. Levensailor asked for clarification regarding lighting impact on the neighbors.

Mr. Strout stated that the tower would have a red light on top that would flash intermittently. He also said that the fishermen would find it helpful for use as a bearing.

The Board discussed further questions regarding the tower lighting.

Justin Strout spoke, and explained further the tower lighting, saying that it would have a light at the top, and three small lights at midpoint. The midpoint lights would not blink.

§8.2.9 Color and Materials. The Chair stated that the Board had been shown an example of the galvanized wire, and it was also discussed at the site visit. The Board found that the standards of this section were met.

§8.2.10 Structural Standards. Mr. Strout explained to the Board what "bird diverters" were, and said they were not an issue that came up often. He gave the Board members a handout with examples.

Justin Strout explained that the handout only addressed the kind that the tower manufacturer knew about. He said there were different kinds, some glowed in the dark and some made noise. He explained that it was usually larger migratory birds that could fly into the guy wires.

The Vice Chair asked the Town Planner if there was enough detail presented, and she said that it would also be necessary to address the structural standards with the Code Enforcement Officer, which could be a condition of approval since it would have to be approved for construction by the Code Enforcement Officer.

The Chair stated that would probably be the case.

§8.2.11.1 Visual Impact. The Town Planner made the Board aware that Strawberry Creek, as well as the area mentioned by Mr. Simmons, are in the area designated scenic resource as designated by the Comprehensive Plan.

Mr. Strout referred the Board to Section 10 in his packet, Map 5, that showed the areas of scenic resources used by Tower Specialists for their determination. He also mentioned that there had been input from the Town Planner as well as the Planning Board members.

The Chair asked if anyone had any comments; there were none. She asked the Board whether they thought there was no unreasonable adverse impact.

§8.2.11.1.2 The Town Planner recommended a waiver from this section of the Ordinance, and the Board agreed that this section could be waived.

The Vice Chair moved that §8.2.11.1.2 under "visual impact" be waived; the motion was seconded.

The Chair asked if there was any discussion; there was none. The Board voted on the waiver, and the motion carried.

§8.2.11.1.3 The Board found that the standards of this section were met.

§8.2.11.1.4 The Chair clarified that there would be stumps left from the trees cut, as well as mature trees left standing. Also, that erosion would not be an issue. The Board found that the standards of this section were met.

§8.2.11.1.5 The Board found that the standards of this section were met.

§8.2.12 Noise. The Town Planner explained that TSI would have to keep this requirement in mind while doing construction and keep the noise under control, but it was not a necessary issue for this review.

§8.2.13 Historic and Archeological Properties. Mr. Strout referred the Board to Section 7 of his packet materials, and the Board determined that the standards of this section were met.

### **Site Plan Review – Findings of Fact**

§15.1 Dimensional Requirements. The Town Planner stated that she received the review from the Code Enforcement Officer after her memorandum was written, and it stated that everything is in compliance with the Ordinances.

§15.2 Utilization of the Site. The standards of this section were met.

The Chair read from the handout provided by Mr. Simmons, which stated that the Town Planner's memo did not mention that "scenic areas must be maintained and preserved to the maximum extent".

Mr. Simmons said that it was in the Site Plan Review Ordinance, §15.2. He expressed the opinion that the criteria for the Site Plan Review Ordinance were more stringent than in the Tower Ordinance.



The Town Planner said that Mr. Simmons was correct; the language she presented in the memo was a paraphrasing of the language that is in the Ordinance. A discussion among the Board members followed regarding "scenic area".

Mr. Strout reminded the Town Planner of the habitat maps they had looked at. She explained that they had been looking at habitat maps when working on the Open Space Plan, and that those scenic areas mentioned would not be impacted, as designated by those maps.

The Chair clarified that there was agreement among the Board on the issue.

§15.3 Adequacy of Road System. Mr. Strout referred the Board to the site plan, and explained that in Phase I, they would use the lease area and the 50 ft. easement for access to the site. He went on to explain access during Phase II (construction) of the project, and that Brian Johnson, a surveyor, would draw the necessary lines.

The Chair clarified that there was no paperwork for Phase II submitted.

The Town Planner stated that there was no road construction plan. She stated that she and the Code Enforcement Officer had agreed on a compromise in terms of what the road ordinance requires and the practical requirements for this particular site. They agreed that a 12 ft. wide gravel road made sense, using the road construction standards for the sub-base and the top. It should be determined whether glass as a sub base would be adequate or not. The Board agreed that the 12 ft. standard in the Basic Land Use Ordinance would suffice.

The Board clarified with Mr. Strout that the road would be used for trucking in the pre-fab buildings during Phase II, and for maintenance of the site thereafter.

The Town Planner also stated that the Town should hire an "appropriate professional" to evaluate the proposed glass road base. She informed the Board that TSI would pay for the engineer. She also clarified for the Board that the Ordinance did not address glass as a sub base.

Justin Strout asked the Town Planner if there was a standard for road construction, since the structure in question was not an occupied structure. The Town Planner explained that there is an ordinance for road construction. She then asked if a waiver was possible, and Mr. Strout expressed uncertainty at the reasons behind having to have a road constructed for Phase I of the project. There was discussion among the Board members.

The Town Planner was concerned that the proposed easement would not be long enough and when the antenna specialists did their construction, they would not have the right to traverse the land around the scale house. She asked Mr. Strout if they intended to have Brian Johnson extend the right of way and have the construction vehicles cut the corner. Mr. Strout explained that, in what they proposed, the corner the Town Planner mentioned would "go away"; this would be in Phase II. She stated that she wanted to make sure the issue of the antenna specialists was addressed, since they would not have the ability to negotiate with the Town, only TSI could. Mr. Strout stated that was the reason that negotiations with the Town had been at a standstill regarding the lease agreement. The Town Planner said that it would have to be approved by the Planning Board, as well.

Mr. Strout said he was trying to separate Phase I and Phase II. He clarified for the Town Planner that there would only be one lease agreement.

Discussion ensued among the Board members regarding lease agreement issues for Phase I being unchangeable once the agreement had been approved by the Board of Selectmen.

The Chair asked whether the negotiated easements would be permanent or temporary, for the purpose of building the tower. Mr. Strout stated that they would be for the duration of the lease. Ms. Floccher stated, for clarification, that the easements being proposed needed to address both those issues in order to give the Planning Board flexibility in the future. Mr. Strout went on to say that the lease agreement had not yet been signed; the letter he had from the Board of Selectmen gave him "right, title and interest" to go before the Planning Board.

Ms. Floccher said that the Board could not approve something in the future that is against a lease they already had, or TSI would be breaking the lease.

Justin Strout clarified that TSI was before the Board trying to get approval for Phase I. The lease agreement with the Town would address the issue the Board had discussed. He said that the lease being negotiated with the Town would include the new easement. He stated that they are trying to get things going, because it would take about six weeks to get the tower. They didn't want "disconnects" between the two. They were of the understanding that they could get permission to get the tower started by appearing before the Planning Board. For Phase II, the communications companies would go before the Planning Board with the lease agreement that showed the new easement, and they could put their buildings in. He said that the lease they have addressed that.

The Vice Chair clarified for Justin Strout that the Planning Board would have to approve their easement for Phase II. She said TSI couldn't write that into the lease and expect the Board to approve it afterward, because they would have made that agreement with another "group".

The Chair said that they might have to have two agreements; Mr. Strout said they might be able to have an amendment to an agreement.

Mr. Papacosma said that approval could be conditional; the Board could approve what they were asking for regarding Phase I. There was discussion among the Board about the idea.

The Chair referred to the letter from the Board of Selectmen to TSI which stated that TSI would not be able to obtain final Planning Board approval unless/until a lease agreement had been executed.

The Town Planner suggested, as a condition of approval, that the Board could add that TSI could have drawn, by a surveyor, the proposed new right-of-way area for the Phase II portion of the development and the driveway. She reiterated for the Board that all site plans should be drawn by a surveyor, particularly this one, because it was going into a lease agreement.

§15.4 Access into the Site. It is to be determined whether the crushed glass road base would be adequate. Therefore, the Board found that the standards of this section were not met.

§15.5 Access/Egress Way Location and Spacing. The Board found that this section did not apply.

§15.6 Internal Vehicular Circulation. This section was addressed in the requirements of §15.4; the Board found that the standards of this section were not met.

§15.7 Parking. There is no parking shown on the plan; therefore, the Board found that the standards of this section were not met.

Mr. Strout stated that it was not drawn out, and the Chair said that the Ordinance required it since the Site Plan Review Ordinance called for it. Mr. Strout asked if that could be a condition, and the Board agreed that it could.

§15.8 Pedestrian Circulation. The Chair said that she did not think this standard applied to this situation. The Town Planner's purpose in addressing the issue was for the instance of someone getting out of their vehicle and having to walk on glass (at this point in time).

§15.9 Stormwater Management. The Town Planner's memo stated that this was not an issue with this type of construction; therefore, the Board found that the standards of this section were met.

§15.10 Erosion Control. Mr. Strout referred the Board to the erosion control plan that TSI submitted with their application materials, which stated that the major focus would be on the two downhill anchor easements. He also said that erosion control would also be addressed for Phase II of the project. The Chair termed this "best management practices".

§15.11 Water Supply and Groundwater Protection. The Board found that this section did not apply to this type of construction

§15.12 Subsurface Waste Disposal. The Board found that this section did not apply.

§15.13 Utilities and Essential Services. Mr. Strout referred the Board to the plan, showing them the locations of underground electric and phone service, and explained the reasons for placing the utility services underground.

§15.14 Natural Features and Buffering. Mr. Strout explained that most of the mature trees would remain on site, with the exception of the areas where the tower and guy wires would be; therefore, the Board found that the standards of this section were met.

The Chair recognized Mr. Simmons for comment. He wanted an explanation of how the neighboring properties would be affected. He mentioned that it had been difficult to obtain a firm location of the tower. Because of that, it would be difficult to gauge the impact to the area. He read from §15.14.2 of the Ordinance, and said that it was probably not written for a tower, but he thought it applied to a tower. He also brought to the Board's attention the language of §4 of the Wireless Telecommunications Facilities Ordinance, "Conflict and Severability", which said that the more restrictive ordinance requirement would apply, if there was conflict with another ordinance, in this case, the Site Plan Review Ordinance.

The Town Planner asked if Mr. Strout could shed light on how close in proximity the nearest dwelling was. The Board addressed the site plan provided, and clarified with Mr. Simmons that he wanted to know exactly where the tower was to be placed.

The Town Planner explained to the Board that the buffering ordinance was in place in order to screen residential areas from manufacturing or commercial use. She went on to clarify buffering as it pertained to the particular site.

There was discussion among the Board and with Mr. Simmons regarding the location of the tower site with relation to his and other neighboring properties. Mr. Simmons said it could be as simple as putting the location of the tower on a plot plan, or even on a tax map.

The Vice Chair moved that the Planning Board meeting be continued past 9:30 PM; there was unanimous assent by the Board members.

After further discussion, the Chair gave the opinion that the standards of this section were still met.

§15.15 Lighting. This information had been discussed previously, and the Board had decided that it would be a condition of approval.

Mr. Simmons expressed the opinion that this section was "especially stringent" due to the wording used in the Ordinance. The Chair thanked him for his comment.

§15.16 Water Quality Protection. Hazardous substances will not be used on site; therefore, the Board found that the standards of this section were met.

§15.17 Hazardous, Special, and Radioactive Materials. The Board found that this section did not apply.

§15.18 Solid, Special, and Hazardous Waste Disposal. The Board found that this section did not apply.

§15.19 Historic and Archeological Resources. The Applicant provided this information; therefore, the Board found that the standard of this section was met.

§15.20 Floodplain Management. The Board found that this section did not apply.

§15.21 Technical and Financial Capacity. The Applicant had submitted a letter from Maine Bank & Trust and a letter of technical capacity; therefore, the Board found that the standard of this section was met.

### **Standard Conditions of Approval**

The Town Planner mentioned to the Chair that also included were additional condition(s) of approval. This section of the Town Planner's memorandum was then read aloud by the Chair. There was discussion among the Board regarding the conditions for approval mentioned in the meeting.

The Vice Chair moved to approve the application with the following to be submitted to the Code Enforcement Officer and the Town Planner for review and approval (the Vice Chair read the motion):

Proof of Liability insurance would be part of the lease. Structural information would be provided to the Code Enforcement Office, including the compromise agreement worked out by the Code Enforcement Officer and the Town Planner which would include approval of the "glass road" by an engineer, and a proposal for the new right-of-way by a surveyor acceptable to the Code Enforcement Officer and the Town Planner, that would also include internal vehicular circulation. Parking detail would also be a condition of approval for the Applicant. Also, erosion control detail for the design of Phase II would be a condition. This also included the surety, §7.2.2.10.

The motion was seconded. The Chair asked for questions or comments from the Board; there were none. Approval was unanimous by the Planning Board.

### **Voting of New Officers**

The Chair, Ms. Carrier, expressed her wish not to be Chair of the Planning Board any longer due to other obligations. She nominated Ms. Rogers, the Vice Chair. The nomination was seconded. The Board voted in Ms. Rogers as Chair of the Planning Board (Ms. Carrier abstained).

Ms. Rogers, the new Chair, opened the meeting to nominations for Vice Chair. Ms. Carrier nominated John Papacosma; the nomination was seconded. The Board voted in Mr. Papacosma as Vice Chair.

Ms. Rogers nominated Robin Brooks as Secretary; the nomination was seconded. The Board voted unanimously to retain Mr. Brooks, who was absent, as Board Secretary.

The former Chair turned the meeting over to the new Chair to continue with the rest of the meeting.

### **Other Board Business**

The Chair confirmed with the Town Planner that there were no jurisdictional items for the Board to address.

The Town Planner then asked the Board to address her memorandum regarding the Affordable Housing Committee. She explained that the Committee needed some information and guidance from the Planning Board before they began constructing an affordable housing ordinance.

The Planning Board discussed their response with the Town Planner; however, the consensus of the Board members was that there was no Affordable Housing Ordinance necessary. They said that accommodations could be made within an existing ordinance. They decided that it would be a good idea to research what other towns, comparable to Harpswell, did regarding the issue.

The Chair asked the Town Planner if there were other towns that had that type of ordinance.

The Town Planner said that Topsham had it within their Zoning Ordinance. She explained that, at present, the Committee was looking at it as a "standalone ordinance" that would recommend that 1% of a subdivision have an affordable component to it.

The Chair stated that there was not enough known, and that she would like to see something from other communities that showed what they were doing.

After some discussion, the Board agreed that a standalone ordinance would not be a good idea. It was also agreed that research into other communities' addressing of the issue was called for.

The Town Planner reiterated that the Affordable Housing Committee had a mandate to create the ordinance.

Ms. Levensailor, who said she was a former member of the Affordable Housing Committee, asked if it would be beneficial for a committee member to go before the Board for guidance.

The Town Planner stated that she would be writing the ordinance for the Committee, and that the month after that, they would be going before the Planning Board for comments on the draft ordinance.

The Board agreed that it would be best if they waited until then to give the Committee guidance.

Discussion among the Board members ensued regarding the creation of ordinances in the past, in particular, the Subdivision Ordinance.

(The recording stopped at this point, just prior to the end of the meeting, and the Recording Secretary had to cease transcription.)

The meeting adjourned at 10:12 PM.

Respectfully submitted,

Melissa Swanson  
Recording Secretary